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June 26, 2015

Jeff S. Jordan, Esq.  
Assistant General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

RE: MUR 6938 – HarperCollins Publishers LLC

Dear Mr. Jordan:

We are submitting this letter on behalf of HarperCollins Publishers LLC ("HarperCollins") in response to the complaint filed by the American Democracy Legal Fund. The complaint alleges that HarperCollins violated the Federal Election Campaign Act of 1971, as amended, ("FECA"), when Peter Schweizer, the author of the HarperCollins-published book, *Clinton Cash* (the "Book"), briefed Senator Rand Paul regarding the Book's contents prior to its release. These allegations, however, are unfounded, and even if the factual allegations were accurate, would not constitute a violation of FECA.

**1. Neither Senator Paul Nor Former Secretary Clinton Was a Candidate**

HarperCollins was not involved in arranging the alleged briefing and was not aware of it until it was reported in the press. Indeed, HarperCollins cannot even directly confirm that the briefing actually occurred.

However, we understand from statements that Mr. Schweizer made to the press that he met with Senator Paul prior to the Senator declaring his candidacy for

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President.<sup>1</sup> Former Secretary Clinton was also not a candidate at the time in that she declared her candidacy after Senator Paul.<sup>2</sup> Rather, Senator Paul and Secretary Clinton were, respectively, a public official and a private citizen acting outside of the prohibitions, limitations and restrictions of FECA. Providing information to a Senator who is not a candidate regarding the former Secretary of State who is also not a candidate cannot result in a violation under FECA.

Given such lack of candidate status, the circumstances surrounding the briefing should not matter. However, we note that it would make perfect sense for Mr. Schweizer to brief Senator Paul for reasons wholly unrelated to any candidacy, future or otherwise. Indeed, although HarperCollins is not familiar with the actual circumstances of the briefing, Senator Paul is an outspoken Member of the Senate's Foreign Relations Committee and would and should have an interest in the activities of the Secretary of State.

## **2. Harper Collins Was Acting in a Commercially Reasonable Manner and as a Media Organization**

Even if Senator Paul had been a Presidential candidate at the time of his meeting with Mr. Schweizer, HarperCollins cannot be viewed as making a contribution in that it was acting in a commercially reasonable manner as a well-established, long-standing publisher. Furthermore, HarperCollins publishing books in the normal course of business would be exempt under FECA's media exemption.

In its nearly 200 years of history, HarperCollins has published books by some of the world's foremost authors. These books have won numerous awards including the Nobel Prize, the Pulitzer Prize and National Book Award, the Newbery Medal and the Caldecott. It regularly publishes books on issues and individuals that are important to public policy, politics and government in this country and that are expected to be profitable for the company.<sup>3</sup> The Book focuses on the intersection of the charitable and business activities of former President of the United States and the then-current Secretary of State and their government service. It is a newsworthy and

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<sup>1</sup> See Emma Roller, *How One Democratic Group Is Using 'Clinton Cash' to Troll Rand Paul*, NATIONAL JOURNAL, (April 30, 2015), available at <http://www.nationaljournal.com/2016-elections/how-one-democratic-group-is-using-clinton-cash-to-troll-rand-paul-20150430>.

<sup>2</sup> See Rand Paul Statement of Candidacy (filed April 8, 2015) and Hillary Rodham Clinton Statement of Candidacy (filed April 13, 2015).

<sup>3</sup> See, e.g., MADELINE ALBRIGHT, MEMO TO THE PRESIDENT ELECT (2008); MARK HALPERIN & JOHN HEILEMANN, GAME CHANGE (2010); MICHAEL KRANISH & SCOTT HELMAN, THE REAL ROMNEY (2012).

important topic, as evidenced by the numerous media outlets reporting on the contents of the Book before and after its publication.<sup>4</sup> The Book has been commercially successful and has spent four weeks on the New York Times Best Sellers non-fiction list.

a. *HarperCollins' Publication of the Book Was Commercially Reasonable*

In Advisory Opinion 2014-06, the Commission articulated the standard for when a corporation's conduct is not subject to FECA because it is bona fide commercial activity: "A corporation's bona fide commercial activity is neither 'for the purpose of influencing any election for federal office' nor 'in connection with any election' and thus is not a contribution or otherwise subject to regulation under the Act. See, e.g., First Gen. Counsel's Rpt. at 13-17, MUR 5474 and 5539 (Dog Eat Dog Films, Inc.) (May 25, 2005) ('Dog Eat Dog'); Advisory Opinion 1994-30 (Conservative Concepts /Pence) at 3-7; Advisory Opinion 1989-21 (Create-a-Craft) at 4. In determining whether activity is *bona fide* commercial activity, the Commission has identified a number of factors, including: '(1) whether the sales of the merchandise involve fundraising activity or solicitations for political contributions; (2) whether the activity is engaged in by the vendor for genuinely commercial purposes and not for the purpose of influencing an election; (3) whether the items are sold at the vendor's usual and normal charge; and (4) whether the purchases are made by individuals for their personal use.' Dog Eat Dog at 14; see also Advisory Opinion 1994-30 (Conservative Concepts/Pence) at 4; Advisory Opinion 1989-21 (Create-a-Craft) at 4." Advisory Opinion 2014-06 (Ryan for Congress).

HarperCollins' publication and promotion of the Book was the bona fide commercial activity of a publisher, and indeed the complaint has not alleged otherwise. The Book and its related marketing did not involve fundraising activity or solicitations for political contribution. All of HarperCollins' activity surrounding the Book and its publication was for the commercial purposes of a for-profit publisher and not for the purpose of influencing an election. The Book has been sold to the public both directly and indirectly through retailers and wholesalers at HarperCollins' usual and normal charge for comparable materials. Numerous private

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<sup>4</sup> See, e.g., Amy Chozick, *New Book, 'Clinton Cash,' Questions Foreign Donations to Foundation*, NEW YORK TIMES, (April 19, 2015), available at <http://www.nytimes.com/2015/04/20/us/politics/new-book-clinton-cash-questions-foreign-donations-to-foundation.html>, Megan Murphy, *Fresh Scrutiny Over Hillary Clinton's Financial Dealings*, FINANCIAL TIMES (April 23, 2015) <http://www.ft.com/cms/s/0/21a7061a-e983-11e4-b863-00144feab7de.html#axzz3dAcgFn9G>.

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citizens unconnected to any campaign have purchased the Book, which is why it has spent four weeks on the New York Times Best Sellers non-fiction list.

b. *HarperCollins is a Media Company and Was Acting in its Media Capacity in Connection with the Book*

In addition to the commercial exemption, HarperCollins' conduct was permissible under the media exemption. Although the full Commission declined to address the question of whether a book qualifies for the media exemption in Advisory 2014-06, three Commissioners filed a concurring statement saying that a candidate's book qualifies as long as it satisfies the traditional media exemption analysis. Concurring Statement of Chairman Lee E. Goodman and Commissioners Matthew S. Petersen and Caroline C. Hunter, Advisory Opinion 2014-06 (Ryan for Congress). That two-step analysis first considers whether the entity is a media entity and second whether it was acting as a press entity and is not owned or controlled by a political party, political committee, or candidate. *See, e.g.*, Advisory Opinion 2010-08 (Citizens United).

HarperCollins is a well-established media entity. As discussed above, it has nearly 200 years of history as a book publisher. It regularly publishes non-fiction works on issues of government and politics. Book publishing is properly viewed as a media activity in the context of FECA, where Congress and the Supreme Court have both indicated that First Amendment press protections should be broadly construed. *See, e.g.*, *Citizens United v. FEC*, 558 U.S. 310, 349 (2010) (noting it would be troubling if the corporate expenditure ban could be applied to books); H.R. Rep. No. 93-1239 at 4 (1974) (indicating Congress did not seek to "limit or burden in any way the First Amendment freedoms of the press and of association"). The Commission itself has expressly said that the "Commission has not limited the press exemption to traditional news outlets, but rather has applied it to 'news stories, commentaries, and editorials, *no matter in what medium they are published.*'" Advisory Opinion 2008-14 (Melothe Inc.) at 3 (quoting *Explanation and Justification for the Regulations on Internet Communications*, 71 Fed. Reg. 8589, 18608-09 (Apr. 12, 2006)). HarperCollins is in the business of publishing news stories, commentaries, and editorials through the medium of books, and in fact, its books have won coveted prizes such as the Pulitzer and the National Book Award.

Many of HarperCollins' books contain news stories, commentaries, or editorials that are similar to the Book. As described above, these include autobiographical works, policy analyses, and political histories. The author too has previously written books on other political and governmental, as well non-political,

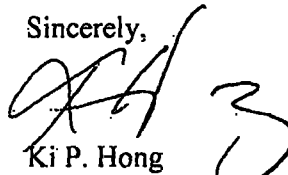
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topics.<sup>5</sup> Furthermore, the Book has been made widely available to the public. Thus, HarperCollins' publication of the Book satisfies the Commission standard for when a media entity is acting in its media capacity. *See* Advisory Opinion 2010-08 (Citizens United). It is well established that promotional activities in support of exempt media material are themselves also exempt. *See, e.g., id.* Accordingly, HarperCollins' costs related to publishing and marketing the Book were not a contribution or expenditure.

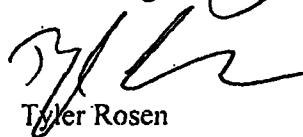
HarperCollins is not owned or controlled by a political party, political committee, or candidate.

For the foregoing reasons, the Commission should not take any further action against Harper Collins.

Sincerely,



Ki P. Hong



Tyler Rosen

Attorneys for HarperCollins Publishers  
LLC

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<sup>5</sup> *See, e.g.,* PETER SCHWEIZER, DISNEY: THE MOUSE BETRAYED (1998); PETER SCHWEIZER, REAGAN'S WAR: THE EPIC STORY OF HIS FORTY-YEAR STRUGGLE AND FINAL TRIUMPH OVER COMMUNISM (2003); PETER SCHWEIZER, ARCHITECTS OF RUIN (2009).